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10	UNITED STATES DISTRICT COURT				
11	NORTHERN DISTRICT OF CALIFORNIA				
12	SAN FRANCISCO DIVISION				
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14					
15	UNITED STATES OF AMERICA,	)	CASE NO. CR 14	4-0306 WHA	
16	Plaintiff, v. LUKE D. BRUGNARA,		) ) UNITED STATES' RESPONSE TO		
17			DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT		
18			Hearing Date: April 7, 2015		
19	Defendant.	) _)	Court:	Hon. William Alsup	
20	Defendant has, once again, moved to dismiss (or "set aside") the indictment in this case based on				
21	alleged misrepresentations to the grand jury by Federal Bureau of Investigation Special Agent Jeremy				
22	Desor. Dkt. 309. The motion should be denied, for three reasons.				
23	First, defense counsel filed this same motion against the prior Superseding Indictment. Dkt. 297.				
24	Since then, the pending Second Superseding Indictment was returned by a different grand jury than that				
25	which returned the initial Indictment and prior Superseding Indictment. The original motion, Dkt. 297,				
26	challenged testimony that was offered to a grand jury that is no longer empaneled and which did not				
27	return the pending Second Superseding Indictment. The existing charges are thus supported by new				
28	estimony, before a new grand jury. Defendant's motion attacks testimony that did not support the				
	United States' Response to Defendant's Motion to Set Aside the Indictment; CR 14-0306 WHA				

pending indictment.

Second, this Court denied the previous motion because it "provide[d] no evidentiary support that Agent Desor lied" and did not meet the local rule requiring that "'[m]otions presenting issues of fact shall be supported by affidavits or declarations." Dkt. 313 (quoting Criminal Local Rule 47-2(b)). Defendant has not improved on the previous motion. He has merely attached an affidavit stating that "the statements and facts presented in the motion to set aside the indictment in this instant matter are true and correct." Dkt. 364 at 2. Even if such a conclusory affidavit were sufficient to meet the requirements of the local rule, there are no statements nor facts presented in body of defendant's "Motion to Set Aside the Indictment," so the affidavit provides no evidentiary support for anything. Nor, as this Court observed, were there specific facts or evidence proffered in Dkt. 297; instead, that motion only averred "in a completely conclusory manner" that "if the Grand Jury had not been misled by the lies and intentional misrepresentations outlined above, then there is a substantial likelihood the Grand Jury would not have indicted Mr. Brugnara." Dkt. 313 (quoting Dkt. 297). After two tries, defendant has still provided no specific testimony or other evidence supporting the allegation that Special Agent Desor provided false testimony about anything.

Third, for the reasons stated in the government's prior opposition, Dkt. 309 at 2–8, even if defendant had actually filed a proper motion supported by actual evidence challenging relevant testimony given to a grand jury that had returned the pending indictment, it should be denied on the merits. Special Agent Desor's testimony was wholly truthful.

21 Respectfully submitted,

MELINDA HAAG United States Attorney

DATED: April 3, 2015

/s/
ROBIN L. HARRIS

BENJAMIN KINGSLEY Assistant United States Attorneys

United States' Response to Defendant's Motion to Set Aside the Indictment; CR 14-0306 WHA